to carry out the difficult task of assuming that the rent he is to fix must be a rent which ignores the facts and compels the arbitrator to make the hypothetical assumption that no cinema was ever built.

In the result their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Masons & Herbert; Smith & Co.*

V. M. PEER MOHAMED v. GREAT EASTERN LIFE ASSURANCE CO. LTD.

[P.C. (Lord Scarman, Lord Elwyn-Jones, Lord Roskill, Lord Brandon of Oakbrook and Lord Templeman) January 22 & February 25, 1985] [Privy Council Appeal No. 15 of 1983]

Contract – Agreement under seal – Assignment of furniture and fixtures – Whether agreement sufficed to assign tenancy of premises – Control of Rent Act (Cap. 266), s. 4.

In this case the premises had been let by the respondents at some time probably before July 20, 1953, on an oral monthly tenancy to one Abdullah. The terms of the monthly tenancy did not prohibit an assignment by the tenant. The tenancy was protected under the Control of Rent Act. An agreement was made between Abdullah, as vendor, one Murugaiyan as attorney and the appellant as the purchaser. The agreement recited that the vendor was the principal tenant of the premises and that the attorney had been appointed to manage the premises. The agreement also recited that the attorney had agreed to sell to the purchaser all fixtures and furniture in the said premises and the purchaser agreed to pay the purchase price of $3,300.00. It was further agreed that the vendor shall cease to be the principal tenant of the premises. The vendor and attorney also covenanted with the purchaser that he had the power to transfer the tenancy into his name and the purchaser undertook on his own account to have the tenancy transferred into his own name. The appellant was in possession of the premises from 1953 onwards. In 1976 the respondents served in the premises notice to quit addressed to the vendor and brought proceedings for possession against the appellant on the ground that he was a trespasser. In the District Court the landlord's claim for possession was dismissed on the grounds that the appellant was the tenant of the premises and was entitled to protection under the Control of Rent Act. On appeal to the High Court the appeal was allowed and an order for possession against the appellant allowed on the ground that the agreement was merely an agreement evidencing the sale and transferring the possession of the furniture and fittings of the premises. An appeal to the Court of Appeal was dismissed – see [1982] 2 M.L.J. 298. The appellant appealed. The question which arose in the case was whether the agreement sufficed to assign the tenancy to the appellant.

Held: in the circumstances of this case, the 1953 deed effected an assignment of the tenancy to the appellant. The appeal should therefore be allowed and the order of the District Court restored.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Ronald Bernstein Q.C. (*Kirk Reynolds* with him) for the appellant.

Gerald Godfrey Q.C. (*Alan Sebestyen* with him) for the respondents.

Cur. Adv. Vult.

Lord Templeman (delivering the Judgment of the Board): This appeal, which has been well presented and argued on behalf of both protagonists, raises a short question of construction arising out of an agreement under seal dated December 9, 1953. The question is whether the agreement sufficed to assign to the appellant, Mr. V.M. Peer Mohamed, a tenancy of the premises 449 East Coast Road, Singapore.

The premises were let by the landlord respondents, the Great Eastern Life Assurance Company Limited, on an oral monthly tenancy at some time prior to December 9, 1953 and probably before July 20, 1953 to Mr. D. Abdullah. The terms of the monthy tenancy did not prohibit an assignment by the tenant. On July 20, 1953 there came into force the Control of Rent Ordinance, 1953 which with amendments is now comprised in the Control of Rent Act (Cap. 266). The 1953 Ordinance conferred security of tenure on tenants and by an express provision, now section 4 of the Act, prohibits the payment of any premium or like sum "...as a condition of the grant, renewal, transfer or continuance of a tenancy...".

The agreement under seal which falls to be construed was made therefore after it had become illegal to demand or receive a sum in consideration of the assignment of a protected tenancy. It is common ground that the tenancy of 449 East Coast Road was protected. The agreement was made between the tenant, Mr. Abdullah described as the vendor of the first part, Mr. Murugaiyan described as the attorney of the second part and the appellant described as the purchaser of the third part. The agreement recited *inter alia* that the vendor was "the principal tenant" of the premises

449 East Coast Road, Singapore and that the attorney had been appointed to manage the premises. The agreement also recited that "the vendor and the attorney has *(sic)* agreed to sell to the purchaser all fixtures and furniture in the said premises and the purchaser has agreed to purchase the same for the sum of dollars three thousand three hundred ($3,300) and it is further agreed that the vendor shall cease to be the principal tenant of the said premises...".

By clause 1 of the deed, expressed to be in consideration of $3,300 then paid "the vendor and the attorney hereby assign unto the purchaser all furniture and fixtures contained in the said premises and to hold the same unto the purchaser absolutely". The assignment only refers to the furniture and fixtures; no doubt the parties to the deed would have been anxious to avoid any appearance that the sum of $3,300 included any form of illegal payment for the assignment of a protected tenancy. By clauses 2 and 3 the vendor and the attorney covenanted with the purchaser "that he has power to transfer the tenancy of the aforesaid premises into his name" and the purchaser undertook "on his own account to have the tenancy transferred into his name and all expenses incurred shall be borne by him". These clauses are puzzling because only the vendor could transfer the tenancy to or into the name of the purchaser. These provisions may mean that the purchaser was to inform the landlords of the transaction and secure that the landlords enter his name in their books instead of the name of the vendor. Mr. Godfrey on behalf of the landlords suggested that it was intended that the vendor's tenancy would be surrendered and that the purchaser would request the landlords to grant him a new tenancy.

By clauses 4 and 5 it was agreed that the purchaser had power to collect and retain the rents from the sub-tenants (if any) and that all City Council consolidated accounts (presumably municipal charges) should be paid by the purchaser. These clauses which may either state the obvious or negative the need for apportionment were said by Mr. Godfrey to be inconsistent with an intention to assign the term. Finally by clause 6 the vendor and the attorney agreed with the purchaser "that they will have no right title or claim in the premises aforesaid as from the date of execution of these presents". Their Lordships consider that this clause read in the light of the recitals and of the previous clauses of the deed is only consistent with an intention that the deed should forthwith effect an assignment of the tenancy to the appellant. The vendor was clearly not intended to take any further action; indeed he emigrated to India immediately after the deed had been executed. The vendor's legal estate in the tenancy could not disappear. The vendor, in conforming with the recital to the deed ceased to be the tenant, the purchaser by clauses 2 to 5 of the deed acquired absolute dominion over the tenancy and over the premises and by clause 6 the vendor admitted to the purchaser that the vendor no longer had any right, title or claim in the premises. The only possible inference is that the right, title or claim of the vendor vested in the purchaser. It is unusual for fixtures and fittings which are capable of passing by delivery to be assigned by deed. The usual course is to have an assignment by delivery accompanied by a simple receipt for the purchase price. A deed is necessary to assign a tenancy and the agreement was executed under seal. An assignment is usually made by the word "assign" but no particular words are necessary, provided the intention of the parties is sufficiently expressed. Their Lordships consider that the intention sufficiently appears from the deed in the present instance.

The appellant was in possession of the premises from 1953 onwards. In 1976 the landlords served on the premises, notice to quit addressed to the vendor Mr. Abdullah and brought these present proceedings for possession against the appellant on the grounds that he was a trespasser. In the District Court, Judge Dalip Singh dismissed the landlords' claim for possession on the grounds that the appellant was the tenant of the premises and was entitled to protection under the Control of Rent Act.

On appeal to the High Court of Singapore, Kulasekaram J. allowed the landlords' appeal and granted them an order for possession against the appellant on the grounds that the agreement of 1953 was "merely an agreement evidencing the sale and transferring possession of the furniture and fittings on the premises..."; but such a construction ignores the recitals to the deed and all its provisions save clause 1 and does not explain why it was thought necessary to transfer fixtures and fittings by deed.

The Court of Appeal of Singapore (Wee Chong Jin C.J., Lai Kew Chai and F.A. Chua JJ.) dismissed the appellant's appeal from the High Court on the grounds that the 1953 deed transferred "the property in the fixtures and fittings on the premises and nothing else to the appellant". They concluded that clause 3 whereby the purchaser

undertook on his own account to have the tenancy transferred into his own name was inconsistent with an assignment of the tenancy by the deed itself. But the appellant could not transfer a legal estate which remained vested in the vendor. It is to meet this difficulty that Mr. Godfrey urged that the deed was only intended to enable the purchaser to produce it to the landlords as evidence that the vendor was content to allow the landlords to treat the original tenancy as though it had been surrendered and to enable the landlords at the request of the appellant to grant a new tenancy to him. This suggestion is ingenious but not credible. All that was required was a simple assignment by the vendor to the appellant. The parties would be anxious that any such assignment would not give the appearance of a transfer of a protected tenancy made in consideration of a sum of money. On the other hand the purchaser would be foolish to rely on the willingness of the landlords to grant him a new tenancy of premises which had become subject to the restrictive provisions of the Control of Rent Ordinance. In the result the parties executed the deed which made it quite clear that the vendor no longer had any interest whatsoever in the premises and that the purchaser had all the rights conferred by the original tenancy. In these circumstances the Board conclude that the 1953 deed effected an assignment of the tenancy to the appellant.

Their Lordships accordingly allow the appeal, discharge the order of Kulasekaram J. and restore the order of Judge Dalip Singh in the District Court. The respondent must pay the costs of the appellant in all the Courts below and before their Lordships.

Appeal allowed.

Solicitors: *Ward Bowie; Coward Chance.*

GEORGE KALLIS (MANUFACTURERS) LTD. v. SUCCESS INSURANCE LTD.

[Privy Council (Lord Fraser of Tullybelton, Lord Diplock, Lord Roskill, Lord Brandon of Oakbrook and Sir William Douglas) April 2, 1985]

Privy Council – Appeal – Documentation – Documents illegible.

In this case the Judicial Committee of the Privy Council criticized the deplorable state of the exhibits to the record.

[*Editorial Note:* The Registrar of the Privy Council in his notice to Privy Council agents said: "Anything that you can do to cajole your professional clients abroad to lodge legible documents for certification would be appreciated. By the time the Record reaches London valuable time has been lost and the difficulty of obtaining good quality copies becomes ever greater." See also Singapore *Practice Direction No. 1 of 1985* [1985] 1 M.L.J. cxxvi.]

PRIVY COUNCIL APPEAL FROM HONG KONG.

Lord Roskill (in the course of delivering the judgment of their Lordships made the following observation): Their Lordships cannot however leave this appeal without mentioning the deplorable state of the exhibits to the record which they have had to attempt to read. Many of the documents, notably the policies, the shipping orders and the bills of lading, were virtually illegible in whole or in part. It seems that copies had been made from what were copies of copies. It was only thanks to the buyers' solicitors prompt telex message to Hong Kong during the hearing that it was revealed that the most crucial wording in the policies had not emerged at all on the photostats in the record.

Their Lordships have sympathy with those responsible for preparing the record since the copies sent from Hong Kong to the Registrar were equally illegible. But illegibility of this kind makes effective advance reading of the papers prior to the hearing, which is now the invariable practice of their Lordships, impossible and without such reading the hearing of appeals is likely to take longer than it should.

Their Lordships must therefore ask solicitors responsible for the preparation of the record and counsel, who when settling their cases must have the record before them, to ensure that the documents in the record are legible in their entirety. It should be remembered that copies typed from illegible documents however carefully typed are not likely to reflect what appeared on the original.